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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,072	04/18/2001	Viktor Brost	655.00955	8832

7590 07/13/2005
WOOD, PHILLIPS, VanSANTEN,
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EXAMINER

DUONG, THO V

ART UNIT PAPER NUMBER

3743

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/837,072
Filing Date: April 18, 2001
Appellant(s): BROST ET AL.

MAILED

JUL 13 2005

Group 3700

Mr. Jeffery N. Fairchild
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 19, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the

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pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-2 and 11 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

6,311,768

Jamison et al.

11-2001

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

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Claims 1, 2 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Jamison et al. (US 6,311,768). Jamison discloses (figures 1, 7, 8 and figure A bellow) a radiator core comprising a radiator core (18) defining a front and a rear face thereof and including a plurality of generally rectangular shaped tubes (20) interleaved with layers of fins (22); a collecting tank (26, 72) attached to the core in a fluid tight manner to provide fluid communication between the tube (20) and the collecting tank; the tubes each having a pair of side walls (48, 62) extending through the core and joined by end walls (50, 52) at the front and rear faces of the core. Jamison further discloses (figure 8) that the tubes (20) each terminating at one end thereof in a formed segment wherein the end walls (50, 52) of each tube are bifurcated for a distance from one end of the tube and at least one of the side walls (62) is directed away from the other side wall to be adapted to contact a side wall of an adjacent tube in the core; the directed side wall (62) being joined in a fluid tight manner to the contacted side wall of the adjacent tube (by brazing). Jamison further discloses (figure 7) that each collecting tank (26) having walls (70, 72) extending over the front and rear faces of the core past bifurcation of the end walls, which start at portion (58), and joined in a fluid tight manner to the end walls of the tubes at a portion (100) along and beyond the bifurcation.

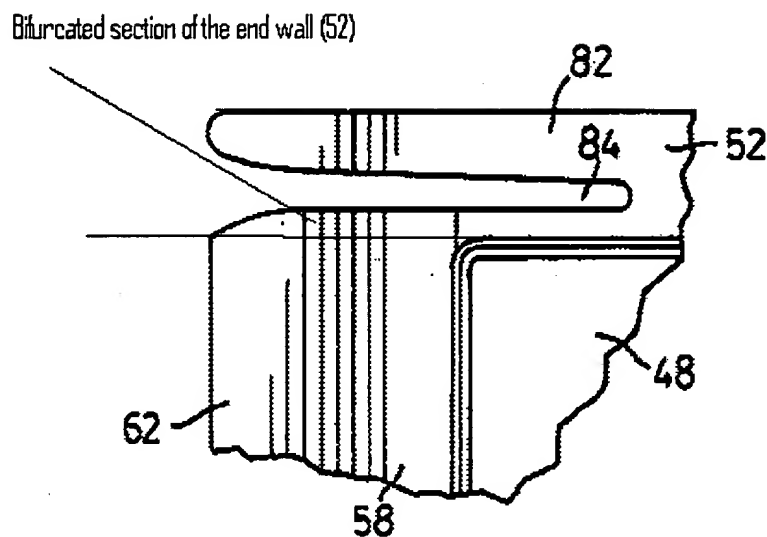


Figure A: The modified figure corresponds to figure 5 which shows the bifurcated section of end walls

(11) Response to Argument

Appellant's arguments filed 4/19/2005 have been fully considered but they are not persuasive. Regarding issue 1, the appellant argues that the examiner's assertion that the flanges (50,52) are end walls, is improper because the flanges (50,52) is different from the end walls as described in the present application. In response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which the appellant relies (i.e., two functions of the end walls in second paragraph, page 5 of the brief) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The examiner also disagrees with the appellant's argument because the appellant does not state any structural difference between the end walls (50,52) of the Jamison and the end wall cited in the rejected claims. The term "end

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wall” indicates a geometrical character of a wall, which is a wall that located at an end or at an edge, and does not inherently to have any function or special structure in the wall itself.

Reference to Jamison clearly shows in figure 3 that the walls (50,52) are located at the end of the plates (44,46). Therefore, it is reasonable to one of ordinary skill in the art to interpret walls (50,52) as end walls. In the Argument of the Brief, the appellant also admit that the flanges (50,52) provide a surface for sealing the plate pairs (second paragraph, page 5) and the flanges (50,52) are joined to the walls of the collecting tank (paragraph 2, page 7). In other word, the flanges (50,52), if it were to interpret as end walls, would anticipate the claimed limitation. The issue 1 has been resolved since it is reasonable to one skill in the art to interpret the flanges (50,52) as end walls since walls (50,52) are located at the end of the sidewalls (48).

Furthermore, for the sake of argument, the end walls (50, 52) can also perform the two functions that the appellant argues on. As admitted by the appellant that the end walls (50, 52) provides a surface to seal the pair of plates, which defines a fluid flow path therein. Therefore, the end walls are capable of defining the fluid flow path. For the rectangular shape function, please see issue 2 bellow.

Regarding the edited figure in the appeal brief, the portions that the appellant indicate as an actual end walls (unnumbered) is just a part of the end walls (50,52) since the end walls (50, 52) extend from the side wall (48) so that the end walls (50, 52) also include the appellant indicated portion.

Regarding issue 2, the appellant argues that reference to Jamison fails to disclose a plurality of generally rectangular shaped tubes because the end walls (50,52) of the tube are not on the same plane with the side walls. The examiner disagrees because if it were the case, then

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the appellant's tube (16) would not be a rectangular shape either since the end walls (30) of the appellant is also not on the same plane with the side walls (28). As disclosed by reference to Jamison in figures 1- 4 or 8, the tube (20) has a generally rectangular shape (emphasis added) because one of ordinary skill in the art can see the longer side of the tube and the shorter side of the tube that are substantially perpendicular. The appellant clearly does not call for any planar nor exact rectangular shape limitations in order to require all Jamison's tubes (20) parts to be in the same plane and rectangular to anticipate the claimed invention. For visualization, Jamison's tube (20) formed by end walls (50, 52) and side wall (48) would have the generally shape viewed from top:

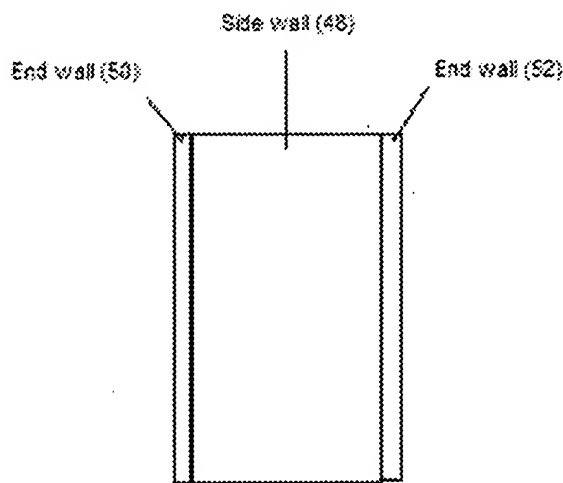


Figure 1A

Despite of the fact that the end walls (50, 52) are not on the same plane with the side wall, one of ordinary skill in the art would conclude that the tube (20) has a generally rectangular shape (See figure 1A above). In any event, the appellant does not disclose any criticality or any unexpected

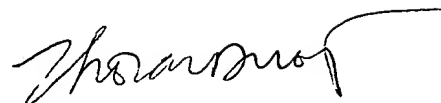
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result in the specification for the shape of the tube to be generally rectangular, substantially rectangular or exact rectangular.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Tho v Duong
Primary Examiner
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TD
July 11, 2005

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